

30.1: General requirements (06/30/16)

In general, Freddie Mac will consider purchasing a multifamily Mortgage secured by a lien on a leasehold estate ("ground lease Mortgage") only if mortgages secured by ground leases have market acceptability in the area in which the Property is located and the lease (the "ground lease") demising the leasehold estate (the "leasehold interest") to the Borrower meets the terms and conditions set forth in this chapter.

In addition to the specific terms and conditions set forth in this chapter, Freddie Mac's purchase of a ground lease Mortgage that is not a ground lease SBL Mortgage is conditioned upon written approval by Freddie Mac after review by counsel for Freddie Mac of the ground lease and Seller's counsel's legal analysis. The Seller will be responsible for the payment of the legal fees for Freddie Mac's counsel, including in-house counsel, if applicable. Freddie Mac's purchase of a ground lease SBL Mortgage is conditioned upon Single Counsel's approval based on its analysis of the ground lease and determination that the ground lease is compliant with the requirements of this chapter.

30.2: Specific requirements for ground lease Mortgages (06/30/16)

At full underwriting (at preliminary underwriting for an early rate-lock delivery), the Seller must deliver to the Applicable Freddie Mac Multifamily Regional Office (with a copy to the applicable Multifamily Attorney) for a non-SBL Mortgage or to the Small Balance Loan Team for an SBL Mortgage, a copy of the ground lease and all existing amendments and a legal analysis of the ground lease by Seller's counsel, using the Ground Lease Analysis form set forth on FreddieMac.com, stating the specific areas (with reference to the applicable section of the ground lease) in which the ground lease

- *Complies with the requirements of this section, or*
- *Fails to comply with the requirements of this section, but explaining why any deviation from the requirements:*
 1. *Does not adversely affect the marketability of the ground lease*
 2. *Will not have a foreseeable adverse effect on the Borrower's intended use of the Property*
 3. *Could not adversely affect Freddie Mac's ability to enforce its rights under the ground lease Mortgage, and*
 4. *Does not deprive Freddie Mac of industry standard leasehold mortgagee protections*

Submission of the ground lease does not relieve the Seller of its responsibility to submit the Ground Lease Analysis prepared by its counsel. Since the Ground Lease Analysis is intended to

assist Freddie Mac's legal counsel in assessing the risks presented by the ground lease, it may be written using terminology that would be best understood by lawyers.

For a ground lease Mortgage to be eligible for purchase, the associated ground lease must meet the following requirements:

a. The following requirements are applicable only to ground leases where the fee owner of the property is not granting a mortgage on the fee estate

- 1. Recordation of Ground Lease. The ground lease (including all amendments) or a memorandum of the ground lease and any assignments by the owner of the fee simple estate ("landlord") or Borrower ("tenant") of its interest in the ground lease must be recorded.*
- 2. Term. The remaining term of the ground lease, together with any renewal options must:*
 - for a self-amortizing mortgage, be at least equal to the amortization period of the ground lease Mortgage, or*
 - for a partially amortizing ground lease Mortgage, extend beyond the maturity date of the ground lease Mortgage by at least the same number of years as the term of the amortization period of the ground lease Mortgage, or*
 - for a ground lease Mortgage with no amortization, extend beyond the maturity date of the ground lease Mortgage by at least 30 years.*

Regardless of the above requirements, the remaining term of the ground lease, together with any renewal options, may not be any less than 10 years after the maturity date of the ground lease Mortgage.

- 3. Sublease. The ground lease may not be a sublease unless Freddie Mac is satisfied that it has received adequate additional security or other assurances to mitigate the additional bankruptcy and other legal risks inherent in a sublease structure.*
- 4. Ground Lease Is In Full Force and Effect. All conditions precedent to effectiveness of the ground lease term commencement must have been satisfied by the date of Freddie Mac's purchase of the ground lease Mortgage, and the ground lease must be in full force and effect.*
- 5. No Limitations on Borrower's Right to Mortgage the Ground Lease. The Borrower's right to mortgage the ground lease must be express and unrestricted by any conditions, including the obligation to obtain the landlord's consent to the ground lease Mortgage or the landlord's approval of the loan documents.*
- 6. Encumbrances.*
 - a. The fee estate of the landlord may not be subject to any encumbrances or liens without Freddie Mac's prior written approval.*

- b. Any existing mortgage on the fee estate of the landlord must be subordinated to the leasehold interest of the Borrower.*
 - c. The ground lease must by its terms prohibit the landlord from mortgaging the fee estate at a later date unless there is an express subordination of the fee mortgage to the tenant's interest under the ground lease.*
 - d. The ground lease must also prohibit the tenant from subordinating its leasehold interest and its interests in subleases and subrents to a subsequent mortgage of the fee estate granted by the landlord.*
- 7. No Conditions on Borrower's Right to Assign the Ground Lease. The Borrower and its successors and assigns must have the unrestricted and unconditional right to assign the leasehold interest, subject only to delivery of notice to the landlord and other routine documentation requirements.*
- 8. Foreclosure or Transfer in Lieu of Foreclosure.*
 - a. The ground lease must allow a foreclosure or a transfer in lieu of foreclosure to nominees of the ground lease mortgagee.*
 - b. The ground lease must provide that each foreclosing ground lease mortgagee and its subsequent assignee is only liable for acts or omissions of the tenant taking place during the period in which it had record title to the leasehold interest.*
 - c. The ground lease must provide for an automatic release of a foreclosing leasehold mortgagee and any purchaser at a foreclosure sale or transferee that receives an assignment in lieu of a foreclosure.*
- 9. Liability. Any liability of the ground lease mortgagee and its assigns to the landlord must be limited to the value of their respective interests in the leasehold interest and the ground lease.*
- 10. Use of the Real Property. The ground lease must not contain any unreasonable restriction (as determined by Freddie Mac in its discretion) on the use of the real property.*
- 11. Right to Sublet. The Borrower must have the right to sublet, subject only to objective criteria that are reasonable to a prudent commercial lender.*
- 12. Commercial Space. If the Property contains commercial space, the ground lease must contain reasonable, objective standards requiring the landlord to grant nondisturbance and attornment agreements to commercial tenants.*

13. *Notice.* The ground lease must require the landlord to give written notice to the ground lease mortgagee of all tenant defaults as a condition of the validity of the landlord's exercise of any remedies for such default. The landlord must forward to the ground lease mortgagee copies of any notices it sends to the tenant, other than rent and other periodic billing notices.
14. *Ground Lease Mortgagee Rights on Default under Ground Lease.*
 - a. *The ground lease must grant the ground lease mortgagee the right to cure a default for the tenant's account within the time permitted to the tenant, plus a reasonable additional time period (including time to obtain relief from any bankruptcy stay in the tenant's bankruptcy) sufficient to enable the ground lease mortgagee to either foreclose the lien of the ground lease Mortgage or obtain the appointment of a receiver or secure other remedies necessary to enable the ground lease mortgagee to cure the default.*
 - b. *The ground lease must provide that if the ground lease contains any default that a ground lease mortgagee cannot reasonably cure and if the ground lease mortgagee has diligently exercised its rights and remedies and cured any curable defaults within the applicable cure period, then the landlord must waive the default.*
15. *Ground Lease Termination.*
 - a. *The ground lease must not be terminable by the landlord as a result of status or other defaults of the tenant that by their nature are not capable of being cured by a ground lease mortgagee, so long as monthly base rents are being paid.*
 - b. *If the ground lease terminates for any reason other than expiration of the term (including rejection or deemed rejection in bankruptcy, a ground lease mortgagee's inability to cure a default, merger of title or attempted surrender by the tenant), the ground lease must obligate the landlord to enter into a new lease with the ground lease mortgagee or its nominee on the same terms and conditions as the old lease, and with same title priority.*
16. *Rights to Extend or Purchase.* The ground lease must provide that the ground lease mortgagee may exercise any rights to extend or purchase the Property (if applicable) without the joinder of the tenant.
17. *Rights of Tenant Requiring Ground Lease Mortgagee Consent.* The ground lease must provide that the following tenant rights (if applicable) may not be exercised by the tenant without the express prior written consent of the ground lease mortgagee:

- a. *Right of the tenant to treat the ground lease as terminated in the event of the landlord's bankruptcy under Section 365(h)(A)(i) of Chapter 11 of the U.S. Bankruptcy Code or any successor statute; and*
- b. *Right of the tenant to modify, restate, terminate, surrender or cancel the ground lease.*

The ground lease must also provide that any exercise of the above rights of the tenant without the prior consent of the ground lease mortgagee would be void at the option of the ground lease mortgagee.

18. *Estoppel Certificates. The landlord must be obligated to deliver estoppel certificates to the ground lease mortgagee on request.*
19. *No Merger of Fee. The ground lease must contain a provision stating that no merger of fee title with the leasehold interest under any circumstances (whether voluntary or involuntary or effected by the landlord or the tenant) will result in the termination of the ground lease or an extinguishment of any ground lease Mortgage.*
20. *If Borrower Is Not the Original Lessee. If the Borrower is not the original tenant under the ground lease, there must be (a) an unbroken chain of assignments that comply with the requirements of the ground lease, and (b) evidence that the landlord has specifically recognized the Borrower as tenant under the ground lease.*
21. *Other Terms or Conditions. The ground lease must not contain any other terms or conditions that, although not specifically set forth in this Section, would be unacceptable to a prudent institutional commercial lender in the area in which the Property is located.*

b. The following requirements are applicable to all ground leases (including where the fee owner of the property is granting a mortgage on the fee estate):

1. *Casualty.*

- a. *The ground lease must not contain a provision for termination in the event of damage or destruction, unless the ground lease Mortgage is paid in full.*
- b. *The ground lease must provide that a ground lease mortgagee has the right to participate in adjustment of losses as to casualty proceeds.*
- c. *The ground lease must provide for payment of hazard insurance proceeds to the ground lease mortgagee or an independent trustee acceptable to the ground lease mortgagee.*

- d. *The landlord must not receive any insurance proceeds until (i) the Property is restored or (ii) the ground lease Mortgage is paid in full. Insurance proceeds that remain after restoration is completed must go to the tenant (subject to the ground lease mortgagee's lien) rather than to the landlord.*
- e. *The tenant's obligation to rebuild must be limited to the amount of available insurance proceeds.*

2. *Condemnation.*

- a. *The ground lease must provide that a ground lease mortgagee has a right to participate in any condemnation proceedings and settlement discussions.*
- b. *The ground lease must provide for payment to the ground lease mortgagee (or trustee for restoration in the case of partial awards) of any condemnation award to which the tenant is entitled under applicable law.*
- c. *The ground lease must provide that any payment to the ground lease mortgagee or trustee, as applicable, must not be less than the total award minus the value of the land that was taken pursuant to the condemnation (considered as unimproved, but encumbered by the ground lease).*
- d. *The ground lease must set forth the formula for allocating the condemnation award between the landlord, the tenant and the ground lease mortgagee (for both partial and total condemnation). The formula must be acceptable to Freddie Mac.*
- e. *In the case of a partial taking, the ground lease must permit the tenant to rebuild and restore the improvements on the Property, unless the ground lease mortgagee requires or consents to distribution of the proceeds. In that event, the proceeds must be applied first toward reduction of the ground lease Mortgage.*
- f. *The ground lease must provide that a ground lease mortgagee has the right to supervise and control the receipt and disbursement of condemnation awards.*

3. **Base Rent.** *The base rent payable under the ground lease must be a fixed ascertainable sum and the ground lease must not contain any provisions that permit increases in the base rent, other than a sum certain increase at a specified date or time interval. Increases based on a reappraisal of the Property are not acceptable. Freddie Mac will consider other increases of the base rent contemplated by the provisions of the ground lease when determining the acceptability of the Mortgage.*

If the ground lease does not meet all of the conditions in this section or otherwise is not acceptable to Freddie Mac, Freddie Mac may require an amendment to the ground lease. Freddie Mac will not accept an amendment to the ground lease in an estoppel certificate unless

the estoppel certificate is recorded and provides that it amends the ground lease for the benefit of the tenant and any future ground lease mortgagee.

30.3: Reserved (01/31/14)

30.4: Lessor's Estoppel Certificate (01/31/14)

The Seller must deliver a ground lessor's estoppel certificate to the [Applicable Freddie Mac Multifamily Regional Office](#), with a copy to the applicable [Multifamily Attorney](#) for approval not less than 10 days before the Origination Date. At a minimum, the estoppel certificate must contain the provisions set forth in the Multifamily Ground Lessor's Estoppel Certificate found on [FreddieMac.com](#). Freddie Mac may require that the Seller add additional provisions to the estoppel certificate, based upon Freddie Mac's review of the terms and conditions of the ground lease. The estoppel certificate must be dated no earlier than 30 days prior to the Origination Date.

The Seller must submit the approved and executed estoppel certificate to Freddie Mac at final delivery of the Mortgage.

30.5: Reserve for rents (01/31/14)

A Reserve for ground rents is not required if the security for the Mortgage includes a lien on the fee estate.

For all other ground lease Mortgages, the Seller/Servicer must establish an appropriate Reserve, as determined by Freddie Mac, for rents due under the ground lease. At the time of final delivery of the ground lease Mortgage to Freddie Mac, the Seller must deliver [Form 1058](#), Letter Agreement for Servicer's Reserve Custodial Account, or [Form 1060](#), Letter Agreement for Reserve Custodial Account, as applicable, completed by the depository institution holding the Custodial Account, acknowledging Freddie Mac's interest in the Custodial Account.

30.6: Title insurance for ground lease Mortgages (06/30/16)

In addition to meeting the requirements set forth in [Chapter 29](#) or [Chapter 29SBL](#), as applicable, the policy must

- 1. Reference the status of fee simple title to the Property and insure the tenant's interest under the ground lease and the tenant's option, if any, to purchase the fee interest in the related land, and*
- 2. Insure that the ground lease is not subordinate to any lien or encumbrance (other than the ground lease Mortgage, if the fee owner is granting a mortgage on the fee estate).*

Freddie Mac may require additional endorsements that it determines are appropriate.